

**Readopt with amendment Ins 2704, effective 2-24-17 (Document #12121), to read as follows:****PART Ins 2704 [~~PREScription PRICES FOR PHARMACISTS AND PHARMACIES~~] *PHARMACY BENEFITS MANAGERS***

Statutory Authority: RSA 400-A:15, I; RSA 415:26; ***RSA 402-N:2***; RSA 420-J:7-b, X; and RSA 420-J:12

Ins 2704.01 [~~Scope. This part shall apply to all health benefit plans providing prescription benefits through a network of participating pharmacies.~~] ***Purpose. The purpose of this part is to provide for the regulation and registration of pharmacy benefits managers and to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of RSA 402-N.***

Ins 2704.02 Definitions.

(a) ***“Annual report” means a report of the data required to be submitted annually in accordance with RSA 402-N:6.***

([a]b) “Commissioner” means the insurance commissioner.

([b]c) “Covered benefits” means those health care services and other medical services to which a covered person is entitled under the terms of a health benefit plan, including pharmacy benefits.

([e]d) “Covered person” means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan.

([e]e) “Contracted copayment” means a fixed amount an individual is responsible to pay for covered prescriptions as set forth in the health benefit plan, or the price for filling the prescription as contracted between the health carrier or its pharmacy benefits manager and the pharmacy, whichever is less.

(f) ***“Department” means the New Hampshire Insurance Department.***

([e]g) “Health benefit plan” means a plan, policy, or certificate of insurance that constitutes health coverage as defined in RSA 420-G:2, IX.

([f]h) “Health carrier” means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the covered costs of health care services, including an insurance company, a health maintenance organization, a health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.

([g]i) “New Hampshire pharmacy board” means the board established in RSA 318:2.

([h]j) “Participating pharmacy” means a pharmacy that, under a contract with the health carrier or its contractor or subcontractor, including any pharmacy benefits manager, has agreed to provide pharmacy services to covered persons with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly, from the health carrier.

([i]k) “Pharmacist” means a person defined in RSA 318:1, XI.

([j]l) “Pharmacy benefits manager” means a “pharmacy benefits manager” as defined in RSA [420-J:3, XXVIII-a] ***402-N:1, VIII.***

***Ins 2704.03 Registration.***

***(a) No person or entity shall manage the prescription drug coverage provided by a health carrier without registering with the department as a PBM. PBMs wishing to do business in this state shall complete an application for registration, available at:  
<https://www.nh.gov/insurance/companies/applications/index.htm>.***

***(b) The registration application shall be completed and signed by an officer or authorized representative of the PBM and filed with the department along with a filing fee of \$500.***

***(c) All PBMs registering with the department shall provide the following:***

- (1) The PBM's contact information;***
- (2) The name of the health carrier(s) whose business is being administered;***
- (3) Information regarding all insurance licenses or registrations held in New Hampshire and any state;***
- (4) An executed copy of the PBM's contract with the health carrier;***
- (5) An attached copy of the notification to be sent to the health carrier's policyholders informing them of the PBM's contracted services;***
- (6) The location of the books and records maintained by the PBM pursuant to the contract with the health carrier;***
- (7) An attached copy of all basic organizational documents of the PBM including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and all amendments to such documents;***
- (8) An attached copy of the bylaws, rules, regulations, or similar documents regulating the internal affairs of the PBM;***
- (9) An attached copy of a current certificate of good standing as a business corporation in this state;***
- (10) The identity of all individuals or entities who are responsible for the conduct of the affairs of the PBM, including:***
  - a. All members of the board of directors, trustees, executive committee, or other governing board or committee;***
  - b. The principal officers, in the case of a corporation;***
  - c. The partners, in the case of a partnership or association;***
  - d. Shareholders holding, directly or indirectly, 10 percent or more of the voting securities of the PBM; and***
  - e. Any other person who exercises control or influence over the affairs of the PBM; and***
- (11) An attached biographical affidavit from each person responsible for the conduct of the affairs of the PBM, including:***

- a. Name;*
- b. Current address;*
- c. Official position;*
- d. Professional qualifications; and*
- e. Any conviction of a crime other than minor traffic violations in the past 10 years.*

*(d) If a PBM has already been granted a license or certificate of authority by the department or is filing an application for a certificate of authority or license at the same time it is registering as a PBM, the PBM need not include in its application for registration the items referenced (c)(7)-(11).*

*(e) A PBM shall notify the commissioner in writing of any change in the information required to be filed under these rules, including a change of address or name, no later than 30 days after the change.*

*(f) Where any form used for compliance with this rule mentions perjury, perjury shall mean any applicable penalty found in RSA 641, falsification in official matters, including RSA 641:3, unsworn falsification.*

***Ins 2704.04 Registration Renewal and Annual Reports.***

*(a) All PBMs shall submit a renewal fee of \$100 and complete a renewal application, available at: <https://www.nh.gov/insurance/companies/applications/index.htm>, by March 1 each year.*

*(b) No registration shall be renewed unless the PBM has submitted an annual report as required by RSA 402-N:6, I.*

*(c) Annual reports shall be submitted in an electronic workbook that includes the following information:*

- (1) Carrier plan code or name;*
- (2) Health carrier's National Association of Insurance Commissioners company code;*
- (3) NHCHIS payer code as defined in Ins 4010.07(c);*
- (4) Plan code as defined in Ins 4010.07(c);*
- (5) HIOS plan ID as defined in Ins 4010.07(c);*
- (6) Insurance type as defined in Ins 4010.07(c);*
- (7) National plan ID;*
- (8) Contract number;*
- (9) Coverage type;*
- (10) Exchange indicator as defined in Ins 4010.07(a);*
- (11) Total amount spent on specialty drugs prior to rebates;*

*(12) Aggregate amount of all rebates collected from pharmaceutical manufacturers for specialty drugs that were attributable to patient utilization in New Hampshire;*

*(13) Total amount spent on non-specialty drugs prior to rebates; and*

*(14) Aggregate amount of all rebates collected from pharmaceutical manufacturers for non-specialty drugs that were attributable to patient utilization in New Hampshire.*

Ins 2704.~~[03]~~**05** Claims Processing.

(a) Every health carrier that provides prescription benefits as a covered benefit under a health benefit plan shall ensure that prescription benefit claims are adjusted and paid in accordance with the requirements of Ins 1001 and RSA 420-J:8-a.

(b) Any health carrier or pharmacy benefits manager shall require all participating pharmacies to charge any covered person the lesser of:

(1) The pharmacy's usual and customary price for filling the prescription; or

(2) The contracted copayment.

(c) The health carrier or pharmacy benefits manager shall not be in violation of this section when the conditions set forth in RSA 420-J:8-a, IV exist[;] or the claim has been submitted fraudulently or with inaccurate or misrepresented information.

Ins 2704.~~[04]~~**06** Complaint Process.

(a) Any pharmacy that fills prescriptions as a covered benefit under a health benefit plan and is adversely affected by the failure of a health carrier or a pharmacy benefits manager to comply with RSA 420-J:7-b, X or RSA 415:26 may file a complaint with the commissioner.

(b) Complaints alleging violations of RSA 420-J:b, X or RSA 415:26 and received directly from pharmacies or referred from the New Hampshire pharmacy board to the commissioner shall be investigated by the commissioner in accordance with the provisions of RSA 400-A:16.

(c) The commissioner shall only investigate substantiated complaints that relate to a fully insured plan within the commissioner's jurisdiction.

(d) A "substantiated complaint" means a complaint that includes all the following information:

(1) The name, address, and license number of the pharmacy filing the complaint;

(2) The name and license number of, and the contact information for, a pharmacist who supports the allegations in the complaint filed;

(3) Information concerning the prescription, including the name of the prescription dispensed and the quantity and dose of the prescription dispensed, with units expressed in terms of volume, number of tablets or capsules, weight, or in other measurement;

(4) The name of the health carrier and the name of the pharmacy benefits manager, if a pharmacy benefits manager is involved in the prescription claim made by the consumer;

(5) A legible copy of the front and back of the consumer's insurance card for prescription benefits;

- (6) The name of the subscriber to the health benefit plan, if that information is not shown on the consumer's insurance card;
- (7) The date the pharmacy dispensed the prescription to the consumer;
- (8) The name of the consumer that requested coverage for the prescription at issue in the complaint; and
- (9) Written evidence that supports the allegations of violation.

(e) The commissioner shall inform the pharmacy if the filed complaint is unsubstantiated and what missing information is needed.

(f) The commissioner shall hold any complaint that is not substantiated in pending status for 90 days from the date of the notice described in (e) to allow the pharmacy to submit required missing information. If missing information is not provided within 90 days of the date of the notice described in (e), the complaint that is not substantiated shall be closed.

***(g) Any consumer may file a complaint with the commissioner. Consumer complaints shall be investigated in accordance with RSA 400-A:15-e.***

~~Ins 2704.[05]~~**07 Enforcement.** ~~[A health carrier or pharmacy benefits manager, when acting in connection with a fully insured plan under the commissioner's jurisdiction, shall be subject to action under RSA 400-A:15, in accordance with the notice and hearing requirements of RSA 400-A:16-24 and Ins 200 for acts or practices in violation of this part.] A PBM shall be subject to the provisions of RSA 402-N:2, III for the following reasons:~~

- (a) Failure to comply with any provisions of this part or of RSA 402-N;***
- (b) Failure to comply with any lawful order of the commissioner;***
- (c) Committing an unfair or deceptive act or practice as described in RSA 417;***
- (d) Filing an application or any necessary forms with the department which contain fraudulent information or omissions;***
- (e) Misappropriation, conversion, illegal withholding, or refusal to pay over, upon proper demand, any monies that belong to a person otherwise entitled to them and that have been entrusted to the PBM in his or her fiduciary capacity;***
- (f) Evidence that an owner, principal, officer, partner, manager, director, trustee, or the PBM itself has:***
  - (1) Had an insurance license or an application for an insurance license in any state denied, suspended, or revoked;***
  - (2) Been the subject of a fine, penalty, order, withdrawal, or informal settlement with any state insurance department; or***
  - (3) Pled guilty or no contest to any felony or misdemeanor; or***
- (g) Fails to meet any qualification for which registration would have been refused had such failure then existed and been known to the Department.***

~~Ins 2704.[06]~~**08 Reporting to the New Hampshire Board of Pharmacy.**

(a) The commissioner shall prepare public reports ~~[in]~~**with** regard to the complaints received from pharmacies or the New Hampshire board of pharmacy under this part.

(b) The public report shall contain the following information:

- (1) A unique numerical identifier for each complaint received;
- (2) The name, address, and license number of the pharmacy filing the complaint;
- (3) The name and license number of the pharmacist who supports the allegations in the complaint filed;
- (4) The name of the health carrier and the name of the pharmacy benefits manager, if a pharmacy benefits manager is involved in the prescription claim made by the consumer;
- (5) The date the complaint was received;
- (6) The nature of the complaint received, to include the prescription at issue, the facts concerning the complaint, and the section of rule or law that is alleged to have been violated;
- (7) The status of the investigation or an indication that the complaint is in pending status, awaiting information from the pharmacy;
- (8) The date of the final resolution of the complaint, if the complaint has been resolved; and
- (9) A description of the final resolution of the complaint, to include the legal and factual findings of the commissioner as to the alleged violation.

(c) The report shall be posted electronically on the department's website at <http://www.nh.gov/insurance/> at least quarterly and shall also be transmitted to the New Hampshire board of pharmacy.

(d) The commissioner shall provide to any complaining pharmacy, upon request, a report of the status of complaints filed by that pharmacy, which shall contain the information set forth in (b) above.

Ins 2704.[07]09 Confidentiality. In accordance with RSA 400-A:16, III, **RSA 402-N:6, II**, and except as otherwise provided in this part, all information collected, obtained, or otherwise in the control or possession of the commissioner from any source relating to any investigation pursuant to this part shall be confidential by law and privileged, shall not be subject to RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

***Ins 2704.10 Periodic Audit.***

***(a) The commissioner has the authority to examine a PBM pursuant to RSA 400-A:37 and RSA 402-N:7 as often as the commissioner deems appropriate. The cost of the audit shall be paid by the PBM pursuant to RSA 402-N:7. Audits shall include to premium collection, claims processing, and marketing practices.***

***(b) The PBM shall have continuing access to all books and records in order to fulfill its contractual obligations.***

***(c) All books and records maintained by the PBM as part of that contractual obligation shall:***

- (1) Be owned by the health carrier or the PBM;***

*(2) Conform to the standards of insurance record keeping required of insurers subject to filing an annual audited financial statement pursuant to RSA 400-A:36;*

*(3) Be retained for 5 years from the date of their creation; and*

*(4) Be subject to examination by the commissioner or the insurer for which the records are kept.*

*(d) Upon termination of an agreement between the PBM and the health carrier pursuant to the termination provisions in the agreement, the records may be transferred to a new PBM in lieu of the required 5 year retention. If such a transfer occurs, the new PBM shall acknowledge in writing that he/she has received the records and shall be responsible for them.*

***Ins 2704.11 Inquiry by Commissioner.***

*(a) The commissioner shall address any inquiries to the PBM concerning its PBM business. The PBM shall reply in writing within 10 working days to any inquiry made by the commissioner pursuant to RSA 400-A:16, II.*

*(b) A PBM shall keep all complaints on file for a period of 5 years. Complaint information shall be made available to the department by the PBM upon the commissioner's request.*

***Ins 2704.12 Waiver or Suspension of Rules.***

*(a) The commissioner, upon the commissioner's own initiative or upon request by an insurer, shall waive any requirement of this part if such waiver does not contradict the objective or intent of the rule and:*

*(1) Applying the rule provision would cause confusion or would be misleading to consumers;*

*(2) The rule provision is in whole or in part inapplicable to the given circumstances;*

*(3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or*

*(4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.*

*(b) No requirement prescribed by statute shall be waived unless expressly authorized by law.*

*(c) Any person or entity seeking a waiver shall make a request in writing.*

*(d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.*

**APPENDIX**

Ins 2704.01	RSA 400-A:15, I; RSA 415:26; RSA 402-N:2; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.02	RSA 318:1, XI; RSA 318:2; RSA 400-A:15, I; RSA 402-N:1; RSA 415:26; RSA 420-G:2, IX; RSA 420-J:3, XIX; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.03	RSA 400-A:15, I; RSA 402-N:2
Ins 2704.04	RSA 400-A:15, I; RSA 402-N:2; RSA 402-N:6
Ins 2704.05	RSA 400-A:15, I; RSA 402-N:4; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:8-a, IV; RSA 420-J:12
Ins 2704.06	RSA 400-A:15, I; RSA 400-A:16; RSA 402-N:5RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.07	RSA 400-A:15, I; RSA 400-A:16; RSA 400-A:17-24; RSA 402-N:2; RSA 415:26; RSA 417; RSA 420-J:7-b, X; RSA 420-J:12; RSA 420-J:14
Ins 2704.08	RSA 400-A:15, I; RSA 402-N:5, II; RSA 415:26; RSA 420-J:7-b, X; RSA 420-J:12
Ins 2704.09	RSA 400-A:15, I; RSA 400-A:16, III; RSA 402-N:6, II; RSA 420-J:10-12
Ins 2704.10	RSA 400-A:15, I; RSA 400-A:37; RSA 402-N:2; RSA 402-N:7
Ins 2704.11	RSA 400-A:15, I; RSA 400-A:16, II; RSA 402-N:2
Ins 2704.12	RSA 400-A:15, I; RSA 541-A:22, IV